

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 102 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CRYSTAL PLOYMER

Versus

SAROGI POLY BARRIES PVT LTD.

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Appearance:

MR LR PUJARI for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 04/02/97

JUDGEMENT

1. This petition is filed by M/s. Crystal Polymer, a partnership firm under Section 433 of the Companies Act to pass an order for winding up of respondent-company namely M/s. Sarogi Poly Barrels Pvt. Ltd.

2. It is the case of the petitioner that the respondent-company has purchased Master Batches from the petitioner -company as per the terms and conditions

agreed between them and those goods were send under the bill No.483 dated 10-10-94. The amount of the said bill was Rs.30,975/- and towards the said bill respondent-company had send a draft of Rs.26,981=50. Even subsequent to that the respondent-company has purchased goods under bill Nos. 636, 683, 696, 684 and 793 worth Rs.1,27,817=99. It is further contention of the petitioner that though petitioner's representative has demanded his dues, the same are not paid by the respondent, and, therefore, a statutory notice was issued on 19th July, 1995 and by sending the reply dated 1-9-95 the respondent had denied its liability, and, therefore, filed the present petition by alleging that the respondent-company is unable to pay its dues within the meaning of the expression under Section 434 of the Companies Act, and, therefore, petitioner is seeking an order of winding up of the respondent-company.

3. A show cause notice was issued to the respondent and the respondent has appeared and has filed affidavit in reply. It is contended that the prices quoted by the petitioner in the bills are at a higher rate then the contracted rate. It is further contended that the goods supplied were of inferior quality and that they were defective goods. Due to the same, the respondent has suffered in his business and respondent-customer has also lodged claim against the petitioner on account of the said inferior quality of the goods. It is contended that the petitioner was informed about the said dispute regarding the petitioner's claim and thus it is contended that in the circumstances of the case as there is a genuine bona fide dispute regarding the debt, the present petition is not tenable in law and that the same should be dismissed.

4. Therefore, only point which arise for my consideration is as to whether the present petition for winding up of the company is to be admitted. My finding on the said point is in the negative for the reasons hereinafter stated.

5. It must be stated at the outset that the proceedings under Section 433 and 434 of the Companies Act are not meant for recovery of the debts or dues from the companies. It is also settled law that if the non-payment of debt is on account of a bona fide dispute as regards the existence of the debt, then the court has to refuse to entertain a petition for winding up of the company. When the claim of the petitioner is disputed by the respondent-company by raising a bona fide dispute the court is justified in rejecting the petition filed under

Section 433.

6. No doubt, the petitioner in this case had issued a statutory notice before filing the present petition to the respondent on 19-8-95. It is also an admitted fact that the said notice was replied by the respondent. It is very pertinent to note that in the said reply the respondent had contended that the claim of the petitioner that there was agreement to pay a particular rate and that the goods were supplied at the agreed rates was not true and correct one. It is further contended that the respondent was also denying its liability to pay the amount of Rs.1,31,811=49 claimed in the said notice. In the said reply it is further mentioned that the goods supplied to the respondent were of inferior quality and the petitioner was informed about the same. Thereafter, the representative of petitioner by named one Pankajbhai had visited the factory of the respondent and inspected the goods and had agreed with the material sent to the respondent was of inferior quality and that there would be settlement of the dispute of the said goods. It is very pertinent to note that the petitioner has not stated in his affidavit which has been filed in support of the petition that all those claims made by the respondent were not honest and bona fide one and that they were malafidely raised in order to avoid its liability. Though the respondent has clearly stated in his affidavit in reply that after the petitioner was informed by the respondent about the conditions of the goods by claiming that they were of inferior quality Shri Pankajbhai has visited their factory and had agreed that the quality of the goods was inferior. In the affidavit in rejoinder, the petitioner has not denied any of these facts. Therefore, in the circumstances, it is very difficult to hold that the dispute regarding the existing of debt raised by the respondent is not an honest dispute and that it is a mala fide one so as to ignore the same.

7. It is also very pertinent to note that in the affidavit which has been filed in support of this petition as well as in the affidavit filed by way of rejoinder, there is no allegation of the petitioner that the respondent-company is indebted to other creditors also. It is not also alleged that the respondent-company is not running its business and that the respondent-company is not in a position to satisfy creditors. In the absence of such allegations and in view of the fact that the respondent has raised a bona fide dispute as regards the debt in question, I am unable to hold that the present petition deserves to be admitted.

8. No doubt, the learned advocate for the petitioner has cited before me the cases of ALUMINIUM EXTRUSIONS & INDUSTRIAL COM. VS. CENTRAL PAINTS 68 ( 1990) COMPANY CASES 477 ; DURGAPUR PROJECTS LTD.IN RE 53 (1983) COMPANY CASES 320 ; STRAW BOARD MFG.CO. VS. MAHALAKSHMI SUGAR MILLS, 71 ( 1991) COMPANY CASES, 544 AND WASINGHOUSE SAXBY FARMER LTD. IN RE 52 ( 1982) COMPANY CASES, 479 in support of his contention for admitting this petition. But in all those petitions it was found by the court that the dispute regarding the debt raised by the respondent was not bona fide one and that those disputes were fictitious.It was also found that there was also material on record to show that the respondent-company was indebted and were not in a position to satisfy its debt. Therefore, in view of those peculiar circumstances of those case, those petitions were admitted and orders of winding up of the companies were passed, but none of those cases are applicable on facts to the case before me. The petitioner has tried to have a shorter way for recovering his debts by filing the present petition. The petitioner will have to go before the Regular Civil Court to recover its debts which are according to him payable by the respondent.

7. I, therefore, hold that the petition will have to be rejected. I accordingly dismiss the petition with no order as to costs.

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